

APPEAL NO. 010684

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on March 12, 2001. The hearing officer resolved the two disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on _____, and that he did not have disability. The claimant's appeal asserts that these determinations are against the great weight of the evidence and contends that he was fired after reporting his injury. The response filed by the respondent (carrier) urges the sufficiency of the evidence to support our affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury. The claimant testified in Spanish that he hurt his back while working on _____, when he lifted and lowered a large window from a truck and the wind caught the window and he twisted his back. The report the claimant made to a supervisor that day states that it was stepping on loose gravel while carrying the window that caused the twisting. The claimant's Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) states that he hurt his back when he pulled the window out of the truck. The carrier's evidence indicated that on August 9, 2000, he and a coworker were observed removing windows from a delivery truck and putting them into a privately owned vehicle and that the claimant was confronted with this information on August 14, 2000. The claimant indicated that his employment was terminated on August 14, 2000.

The hearing officer did not find the claimant's testimony credible and resolved the disputed issues against him. It is the hearing officer who is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and who, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge